



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,949	02/20/2004	Anthony M. Ging	4398-286	9703
23117	7590	03/14/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.

10/781.949

<b>Applicant(s)</b>
---------------------

GING ET AL.

Examiner

Nihir Patel

Art Unit	
----------	--

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1 and 4-6 is/are allowed.
- 6) ☒ Claim(s) 7, 9-19 and 22-27 is/are rejected.
- 7) ☒ Claim(s) 8, 20 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. **As to claims 1 and 4-6**, applicant's arguments filed on January 4, 2006 have been fully considered and are persuasive.
2. **As to claim 7**, applicant's arguments on January 4, 2006 have been fully considered and are not persuasive. The applicant argues that Replogle/Wright fails to teach a cushion for use with a nasal mask, comprising an outer membrane including a face contacting portion to form a seal with the patient and an underlying rim positioned below the membrane and a cushion that includes a nasal bridge region, a top lip region, and two side regions. The examiner disagrees. Replogle does teach a cushion for use with a nasal mask, comprising an outer membrane including a face contacting portion to form a seal with the patient and an underlying rim positioned below the membrane and a cushion that includes a nasal bridge region, a top lip region, and two side regions (**see figures 1 and 2**).
3. **As to claim 14**, applicant's arguments filed on January 4, 2006 have been fully considered and are not persuasive. The applicant argues that Replogle/Wright fails to teach a crossover member. The examiner disagrees. Replogle does teach a crossover member **12** (in a broad sense the buckles is considered a crossover member).
4. **As to claims 15 and 16**, applicant's arguments filed on January 4, 2006 have been fully considered and are not persuasive. The applicant argues that Replogle/Wright fails to teach first and second straps each adapted to be provided to the mask frame of the mask, wherein each of the first and second straps includes an at least partially coextensive yoke, each of the first and second straps along the yoke being constructed to accommodate a pre-adult in the range of 2-6

Art Unit: 3743

years. Replogle teaches first and second straps, each adapted to be provided to the mask frame of the mask, wherein each of the first and second straps includes an at least partially coextensive yoke and Wright teaches a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

***Allowable Subject Matter***

1. Claims **1 and 4-6** are allowed.
2. Claims **8, 20 and 21** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims **7, 9-19 and 22-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Replogle (US 3,117,574) in view of Wright (US 4,657,010).

4. Referring to claims **7, 12, 13, 14 and 18**, Replogle discloses the applicant's invention as claimed with the exception of stating that the mask can accommodate at least one of a pre-adult patient or small sized patient. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claims 7 and 14 and considers a matter of design choice since the size of the yoke depends on the individual, the individual either being an adult or a child.

5. Referring to claims **9 and 22**, Replogle discloses the applicant's invention as claimed with the exception of providing a rim that includes an aperture having a width of between about 30-42mm, an effective height as vertically measured from an edge of the rim to a top of the cushion of about 32-42mm, and an effective bridge depth about 13-24mm as vertically measured from the membrane in the nasal bridge region to the rim. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claim 9, and considers a matter of design choice

since the size of the yoke depends on the individual, the individual either being an adult or a child.

6. **Referring to claims 10 and 23**, Replogle discloses the applicant's invention as claimed with the exception of providing a rim that has a width of about 39-40mm, a height of about 35 mm and the depth is less than about 15mm. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claim 10, and considers a matter of design choice since the size of the yoke depends on the individual, the individual either being an adult or a child.

7. **Referring to claims 11 and 24**, Replogle discloses the applicant's invention as claimed with the exception of providing a rim that has a width of about 34-35mm, a height of about 40 mm and the depth is less than about 20mm. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claim 11, and considers a matter of design choice since the size of the yoke depends on the individual, the individual either being an adult or a child.

Art Unit: 3743

8. **Referring to claims 15, 26 and 27**, Replogle discloses the applicant's invention as claimed with the exception of stating that the yoke is constructed and angled to accommodate a pre-adult in the age range of 2 to 6 years. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

9. **Referring to claims 16, 17, 19 and 25**, Replogle discloses the applicant's invention as claimed with the exception of stating that the yoke is constructed and angled to accommodate a pre-adult in the age range of 6 to 16 years. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

### ***Conclusion***

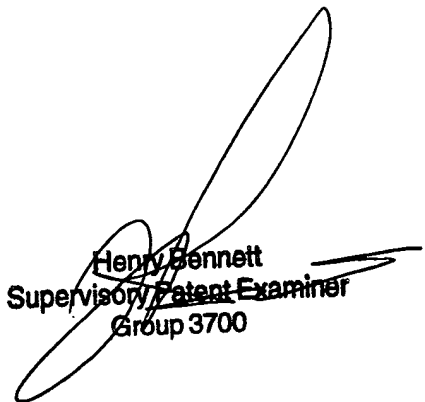
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nihir Patel  
Art Unit 3743



Henry Bennett  
Supervisory Patent Examiner  
Group 3700